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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,774	06/20/2003	Bryan Keith Feller	9281	5936

27752 7590 12/16/2005

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EXAMINER

HAND, MELANIE JO

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/600,774

Applicant(s)

FELLER ET AL.

Examiner

Melanie J. Hand

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/12/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on January 12, 2004 was filed after the mailing date of the Application on June 20, 2003. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Claim Objections***

Claim 18 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 18 is a duplicate of claim 6.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1,2,12 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims merely setting forth physical characteristics desired in article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in future and which would impart desired

characteristics; thus, expression "a liquefiable substance having a liquefaction temperature from about 40°C. to about 300°C. and being compatible with the ingredients in the powdered detergent composition" is too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and, in effect, recites compounds by what it is desired that they do rather than what they are; expression also is too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended. *Ex parte Slob* (PO BdApp) 157 USPQ 172.

***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 12-18 and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chen et al (U.S. Patent No. 6,503,233).

With respect to **Claims 1,2,12,13**: Chen teaches an absorbent article 50 comprising a liquid-pervious topsheet (not shown) comprised of spunbond polypropylene film having a first elastic modulus, central and outer absorbent members 58 and 54, respectively, comprised of fluff pulp (Col. 10, lines 13-15) having a second elastic modulus, and a fluid impermeable backsheet 52 joined to said topsheet. (Fig. 3) ('233, Col. 2, lines 46-51, Col. 19, lines 54-59) Applicant merely sets forth in the disclosure for fabrication material for facing layer 21 any nonwoven polymeric web known in the art "having sufficient mechanical properties to be utilized as facing layer 21". (see Specification, Page 5, lines 1,2,8-10)

Taking into account the rejection under 35 U.S.C. 112 of Claims 1,2,12 and 13, Chen, by virtue of teaching a polypropylene web, teaches a topsheet that satisfies the limitations of Claims 1,2,12 and 13. Applicant also sets forth that the absorbent core of the claimed invention is comprised of Foley fluff pulp. Since Chen teaches fluff pulp as the material used to fabricate absorbent members 54 and 58, Chen is inherently teaching an absorbent article wherein the elastic modulus of the absorbent members 54 and 58 is greater than that of said topsheet, and that the range for a ratio of first elastic modulus to second elastic modulus is 6:1-2,000:1.

With respect to **Claim 3**: Chen teaches that the outer absorbent member has a transverse width of between 4 cm and about 8 cm (40 mm to about 80 mm). ('233, Col. 10, lines 60-65)

With respect to **Claim 4**: Chen teaches that the density of the central and outer absorbent members 58 and 54 is between 0.03 g/cc and 0.15 g/cc. ('233, Col. 10, lines 17-22)

With respect to **Claim 5**: Chen teaches that wicking barrier 71 comprised of polypropylene film has a thickness of 0.5 mm or less. ('233, Col. 14, lines 62-65) Chen teaches that the thickness

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of absorbent members 54 and 58 can range from 2 mm to 50 mm ('233, Col. 17, lines 51-53) Examiner is concluding that since the wicking barrier film material is suitable for use as a topsheet, and topsheets used in the art are known to have a thickness in this range, that the thickness of said topsheet is also 0.5 mm or less, giving a ratio for caliper of topsheet to caliper of said absorbent foam member 58 that is less than or equal to 1:4.

With respect to **Claims 6,18**: As can best be seen from Figs. 1-4 and 9-13, Chen teaches that article 50 is a sanitary napkin.

With respect to **Claims 7,14**: Chen teaches that article 50 is formed by placing flat a liquid-impermeable sheet of material, then disposing the absorbent members thereupon, and finally laying a topsheet material over the absorbent members and joining a topsheet and backsheet 52 to one another around the periphery of outer absorbent member 54. ('233, Col. 2, lines 46-55)

With respect to **Claim 8**: Chen teaches that article 50 assumes a "W" conformation during use (Figs. 6-8) ('233, Col. 6, lines 48-50), which is concluded herein to be substantially convex with respect to the body facing surface across the transverse width of said article.

With respect to **Claims 15,20**: Chen teaches two crease lines 56 transversely opposed to one another and thereby defining a width. Chen teaches that these channels are formed by embossing and create densified regions. ('233, Col. 7, lines 56-58)

With respect to **Claim 16**: Chen teaches that the central void in the outer absorbent member that accommodates said central absorbent member has a width in the range of 2 cm – 6 cm (20 mm – 60 mm). ('233, Col. 10, lines 66,67, Col. 11, line 1)

With respect to **Claim 17**: Please see the rejection of Claim 1 in addition to the following: Since the first elastic modulus is greater than the second elastic modulus as taught by the combined teaching of Chen and Thunhorst, the first tangential modulus of said topsheet will also be greater than the second tangential modulus of the absorbent foam 58.

Claims 9-11 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al ('233) in view of Cinelli et al (U.S. Patent Application Publication No. 2002/0013565).

With respect to **Claims 9,10,11,19**: Chen does not teach a secondary topsheet in addition to the existing topsheet. Cinelli teaches an absorbent article comprising a multilaminate elastomeric nonwoven topsheet. ('565, ¶ 0095) Cinelli teaches that this topsheet is apertured so as to be pervious to exudates yet nonabsorbent thereby preventing rewet. ('565, ¶ 0092) A multilaminate structure would have enhanced magnitudes of these characteristics, therefore it would be obvious to one of ordinary skill in the art to modify the topsheet taught by Chen to be a multilaminate apertured film structure as taught by Cinelli.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Melanie J Hand  
Examiner  
Art Unit 3761

MJH

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER  
